

USAWC STRATEGY RESEARCH PROJECT

**THE MILITARY'S CHANGING ROLE IN HOMELAND SECURITY:
WHAT DOES RIGHT LOOK LIKE?**

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ABSTRACT

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My intent is to analyze the current discussion regarding the military's role in homeland security to determine the proper utilization of the United States' military instrument of power as it pertains to homeland security operations.

The Department of Homeland Security continues to experience change as the department seeks its niche in the government as provided and directed by the President. Several recent discussions, much of which have been captured in the media, have potentially started the military down a road I do not believe the military should go. As a self-proclaimed pragmatist, I believe the military instrument of national power is sanctioned to fight the nation's wars, in a true Clausewitzian sense. Should an actor threaten or attack the United States, I believe the military should be utilized to secure and defend the nation and public and not be responsible for citizen security as some experts argue.

In order to properly utilize the military instrument of national power, the United States government must once again grapple with the grammar and logic of the same and clearly establish feasible, acceptable, and suitable missions for the military at the federal, state, and local levels of government regarding homeland security operations.

THE MILITARY'S CHANGING ROLE IN HOMELAND SECURITY: WHAT DOES RIGHT LOOK LIKE?

In times of peace and prosperity cities and individuals alike follow higher standards because they are not forced into a situation where they have to do what they do not want to do. But war is a stern teacher, in depriving them of the power of easily satisfying their daily wants, it brings most people's minds down to the level of their actual circumstances.¹

This quote by Thucydides from the time of the Peloponnesian Wars still holds true today, and more importantly, addresses not only prosecuting the nation's wars but has utility in contending with natural disasters and domestic emergencies as well. As the nation deals with the recent aftermath of Hurricanes Katrina, Rita, and Wilma that ravaged the United States Gulf Coast Region, leaders at all levels of government are conducting after action reviews of existing emergency action plans and are discovering the plans to be either circumspect or woefully outdated, leaving the public in want of the most basic of needs: food, clothing, and shelter. Certain leaders have waved accusatory fingers at other levels of government in an attempt to deflect criticism of their own failed leadership. Still others believe that the federal government, and most specifically the military, is in the best position and is the best equipped to handle America's disasters and emergencies.

This groundswell of support for the military to be the nation's '911 force' or national first responders has grown to the point the issue has reached the doorstep of the White House. President Bush, following Hurricane Katrina, called for a "greater federal role in large-scale disaster response efforts, and greater use of military forces in particular."² In the wake of this directive, the Department of Defense has already taken steps to designate permanent Defense Coordinating Officers (DCOs) at state-level and is currently mulling over the creation of new military police units and designation of a dedicated military unit which will respond to similar catastrophic events in the future.³ Other leaders in the United States Congress are discussing altering the Posse Comitatus Act of 1878 to give the military greater power in a law enforcement role in domestic operations.⁴

Inasmuch as this may be seen as being done for the greater good, I am not one who believes the military should take on an increased role in homeland security operations. As a self-proclaimed pragmatist, I believe the military instrument of national power is sanctioned to fight and win the nation's wars—in a true Clausewitzian sense—and should also respond to national security and public security issues (e.g., those threats which affect the larger society and entail the joint use of military and civilian law enforcement), as required. Somehow though, in the aftermath of these destructive hurricanes, the line of demarcation between public security

and citizen security has become blurred and leaders across the nation are climbing onto the proverbial bandwagon to task the military with greater roles, missions, and responsibilities, even in this time of the present Global War on Terrorism. This blurring has a resultant shift toward citizen security which I believe to be of detriment to the military as a whole, especially as the increased role overextends the military with the assignment of additional missions at the lower end of the range of military operations.

As an integral part of this discussion, and given the recent domestic events and the current global war on terrorism, the current national debate begs the question: Will the United States government change its policies regarding the use of its homeland security forces here and abroad? If so, how? Does the United States government need to review the Posse Comitatus Act of 1878? And what about the Stafford Act: Does it also need revision? Much has been written in the past few months regarding possibly reengineering policy, especially as the government continues to struggle with the roles of the Department of Homeland Security, the Federal Emergency Management Agency (FEMA), and the United States Northern Command (NORTHCOM). However, one question remains unanswered: How will the United States government change the military's role at the federal, state, and local level as a part of homeland security? One thing is clear: The U.S. government must reengineer the military in order to meet the domestic and international challenges of the new millennium. I believe the answer lies in (1) structuring the active component of the military and the Reserves to primarily fight and win the nation's wars and secondarily augment the National Guard to react to domestic emergencies when required by the President and (2) re-designating and restructuring the National Guard as non-deployable in order to provide a configured, trained, resourced, and ready response force that reports to the respective Governors and State Adjutant Generals in the individual states.

As I approach the issue at hand, I will not attempt to solve the problem by the formalization of my research, for there are others tasked with accomplishing that purpose. Instead, my intent is to analyze the current discussion in an effort to provide what I believe to be a plausible solution for the proper utilization of the United States' military instrument of national power as it pertains to homeland security and all-hazard domestic incident operations.⁵ For the purposes of this project, I will frame my argument by analyzing the constitutional requirements and statutory limitations; analyzing published national strategies and the National Response Plan; reviewing the Oklahoma City bombing as a historical case study; conducting an analysis of the current operating environment with regard to the aforementioned; drawing conclusions; and making a recommendation. By analyzing (1) what the law requires; (2) what the different

United States strategies state; (3) how the United States has responded in the past; and (4) how the armed forces are configured today, my goal is to shed light on the debate and recommend what I believe should be the military's roles at the federal, state, and local levels in these operations.

Framing the Argument: Constitutional Requirements and Statutory Limitations

The United States Constitution is the foundation and the chronological starting point for addressing the problem at hand. It established a republic with limits on the government "through a system of checks and balances, a distribution of state and federal rights, and an affirmation of the rights and freedoms of individuals."⁶ As designed by America's Founding Fathers, the Constitution was a functional approach to establishing the primary law of the United States federal government, including the three Branches: Legislative, Executive, and Judicial.⁷ According to the Preamble, the government's stated purpose is ". . . to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."⁸ With regard to the Legislative Branch, Section 8 of Article I empowers the Congress to raise and support armies; provide and maintain a navy; make rules concerning the regulation of land and naval forces; call forth "the militia to execute the laws of the union, suppress insurrections, and repel invasions; and organize, arm, and discipline the militia."⁹ Regarding the Executive Branch, Section 2 of Article II establishes the President as the commander in chief of the army and navy as well as the militia when federalized.¹⁰ All of these are intentionally broad powers. Finally, the 2d Amendment in the Bill of Rights states that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be abridged."¹¹

Given the foundation laid by the Constitution, what are the statutory limitations to the utilization of the military? The United States Code defines what comprises the United States armed forces (the Army, Navy, Marine Corps, Air Force, and the Coast Guard) and how and when the different services can be utilized. Title 10 of the United States Code establishes the roles, missions, and responsibilities of the U.S. armed forces and states the following for the Army:

It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of (1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States; (2) supporting the national policies; (3) implementing the national objectives; and (4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

And—

In general, the Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It is responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.¹²

Subsequent subtitles to Title 10 address organization and administration of the different armed services and the reserve components. Subtitle B further defines the Army as consisting of the Regular Army, the Army National Guard, and the Army Reserve. The same section also defines the Reserve Components as consisting of the Army Reserve, the Army National Guard, and the Air National Guard which are organized, armed, and equipped wholly or partly at Federal expense and are federally recognized. Subtitle C defines the United States Navy as including the Regular Navy, the Fleet Reserve, and the Naval Reserve; the same section defines the United States Marines Corps as including the Regular Marine Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve.¹³ Subtitle D defines the United States Air Force as consisting of the Regular Air Force, the Air National Guard of the United States, and the Air National Guard while in the service of the United States, and the Air Force Reserve.¹⁴ Subtitle E provides the purpose for the Reserve Components:

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.¹⁵

Furthermore, the basic policy for ordering the reserve components into Federal service is delineated in the same subtitle:

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.¹⁶

Additionally, Title 14 of the U.S. Code addresses the organization of the Coast Guard, establishing it as ". . . a military service and a branch of the armed forces of the United States at all times. The Coast Guard shall be a service in the Department of Transportation, except when

operating as a service in the Navy.”¹⁷ This task organization was changed on 1 March 2005, realigning the U.S. Coast Guard under the Department of Homeland Security when not operating as a service of the Navy.¹⁸ The U.S. Coast Guard’s primary duties are to “. . . enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States;” and to “. . . maintain a state of readiness to function as a specialized service in the Navy in time of war, including the fulfillment of Maritime Defense Zone command responsibilities.”¹⁹

Finally, Title 32 of the U.S. Code addresses the utilization of the National Guard in the respective states or territories. The title also requires that the National Guard maintain a prepared and ready posture for use at the state by state legislators or the Governor or at the federal level when federalized,²⁰ as well as for use in drug interdiction and counter-drug activities when both not in Federal service and when federalized.²¹

On balance, one can see from Title 10, Title 14, and Title 32 that these sections address the utilization of the armed forces when the U.S. national security is at risk; however, and perhaps most importantly with regard to this discussion, is the fact that, i.e., the Army, through the Secretary of the Army, “. . . shall perform such other duties as the President or Secretary of Defense may direct.”²² Is this the vague catch-all phrase that the President or Secretary of Defense reaches for when a calamity strikes the homeland or other nation-state? This may have bearing on the discussion later in this article.

The National Security Act was established in 1947 in order to reorganize the U.S. government foreign policy structure as well as the military department, which in turn further defined the civilian leadership-to-military working relationship the federal, state, and local governments experience today. The National Security Act was amended several times over the years of the Cold War.²³ In the aftermath of the events of September 11, 2001, the 107th Congress passed House Resolution 5005, titled the Homeland Security Act of 2002, which established the Department of Homeland Security (DHS).²⁴ This sweeping legislation brought together several federal offices, including the U.S. Coast Guard and the Federal Emergency Management Agency (FEMA), under one umbrella organization with the mission, in part, “. . . [to] prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation.”²⁵ Following the establishment of the DHS, the Department of Defense established Northern Command (NORTHCOM), headquartered at Peterson Air Force Base in Colorado. This new unified command headquarters is responsible for defense of the homeland as well as providing military support to civil authorities,²⁶ in keeping with constitutional requirements and statutory limitations.

As I continue to gradually taper the statutory limitations as they apply to the discussion at hand, I next turn attention to the Posse Comitatus Act of 1878 and the Insurrection Act. The Posse Comitatus Act prohibits the use of federal troops (originally Army and Air Force but extended to the Navy and Marines by Department of Defense policy²⁷) “from engaging directly in domestic law enforcement except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.”²⁸ Conversely, under the provisions established in general military law in Title 10 of the U.S. Code (otherwise known as the Insurrection Act), the President may, “. . . upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.”²⁹ Title 10 also provides the President with the means to enforce Federal authority in the ordinary course of judicial proceedings when “. . . unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States.”³⁰ Furthermore, Section 333 of Title 10 addresses equal protection under the Constitution and provides the President with the ability to utilize a State’s militia or the armed forces—

to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it . . . so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection.³¹

Although these provisions allow the President to exercise his executive power in these instances, Title 10 does place two restrictions on the President with regard to military support to civilian law enforcement agencies. The first does not allow direct participation by military personnel “. . . in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.”³² The second restriction does not allow the use of a State’s militia or the federal armed forces should their use adversely impact the defense preparedness of the United States.³³ This last point is especially important, as I will discuss later.

And, as is always the case regarding resourcing of such emergencies and incidents, it is important to cite the fiscal ability to fund the federal response upon Presidential disaster declaration. The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (as amended 1988 (42 US Code Section 5121 *et seq.*) was enacted to provide federal assistance to state and local governments in order to alleviate suffering and damages from disasters.³⁴

According to the Stafford Act, the President “may direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law . . . in support of State and local assistance efforts.”³⁵ The Federal Emergency Management Agency (FEMA), organized in 1979, was responsible for the fiscal determination of the administration of funds under provisions of the Stafford Act in support of a national response to all hazards;³⁶ however, with the enactment of the Homeland Security Act, all authorities under the Stafford Act have been redelegated to the Under Secretary of Emergency Preparedness and Response, Department of Homeland Security.³⁷

National Strategies and the National Response Plan

Although I have used the following terms previously in this article, I believe it is pertinent at this point to define the terms *homeland security*, *homeland defense*, and *military assistance to civil authorities* before proceeding. According to the National Strategy for Homeland Security and Department of Defense Joint Publication 1-02, homeland security “. . . is a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”³⁸ Homeland defense, the primary responsibility of the Department of Defense, is “The protection of United States sovereignty, territory, domestic population, and critical infrastructure against external threats and aggression or other threats as directed by the President.”³⁹ Military assistance to civil authorities is “The broad mission of civil support consisting of the three mission subsets of military support to civil authorities [for domestic emergencies], military support to civilian law enforcement agencies, and military assistance for civil disturbances.”⁴⁰ The definitional difference between homeland security and homeland defense is subtle; however, the clarifier for the latter—Department of Defense—is the key, and this will become clearer as the discussion progresses.

The overarching national strategies that I refer to in this portion are the National Security Strategy (NSS), the National Defense Strategy (NDS), the National Military Strategy (NMS), and the National Strategy for Homeland Security. I will also analyze the National Response Plan.

The National Security Strategy of the United States of America, September 2002, establishes homeland security as the Nation's top priority. As such, the strategy first addresses the use of force (and the probable use of the armed forces) against terrorist acts by defending the homeland in concert with the preemptive strike doctrine.⁴¹ The Bush administration then addresses the need to use military forces in a potentially innovative manner,⁴² of which the administration does not elaborate. This innovation is further addressed later in the strategy as it

applies to what the President sees as a need for the North Atlantic Treaty Association (NATO) to develop “. . . highly mobile, specially trained forces . . . to respond to a threat against any member of the alliance.”⁴³ Although not directly involved in the security and defense of the United States, these thoughts relative to a transformed and expeditionary military, coupled with the ongoing globalization which is blurring the line between foreign and domestic spheres,⁴⁴ could help explain the administration’s desire to have the Department of Defense investigate organizing a military response unit for domestic incidents.

The National Defense Strategy of the United States of America, March 2005, addresses protecting the homeland in two parts of the document and in two different ways. First and foremost, Secretary of Defense Rumsfeld is convinced that extending the Nation’s strategic military reach will best protect the homeland. Secretary Rumsfeld plans to achieve this by identifying, disrupting and defeating the enemy at a safe distance,⁴⁵ i.e., conducting missions overseas and sharing intelligence. And should that fail, the second, less desirable option will be “providing defense support to civil authorities as directed.”⁴⁶

The National Military Strategy of the United States of America, 2004, also addresses protecting the homeland, including providing military support to civil authorities, especially when first responders are overwhelmed from an attack or natural catastrophe, as well as providing military support to law enforcement agencies during special events. This portion of the strategy is somewhat vague in that the Chairman stipulates that, “Military responses under these conditions require a streamlined chain-of-command that integrates the unique capabilities of active and reserve military components and civilian responders.”⁴⁷ The strategy does not establish a set of priorities or chain-of-command nor does the strategy seek to clarify how the military assistance is supposed to work.

The National Strategy for Homeland Security, July 2002, is the first document of its kind in this country, and it focuses on securing the homeland from terrorist attacks. The Executive Summary addresses the need for a collective, “. . . coordinated and focused effort from our entire society.”⁴⁸ The President readily recognizes the fact that the U.S. government is based on federalism, which is a system with shared responsibilities and power between the state governments and federal institutions, which, in his words—

provides unique opportunity challenges for our homeland security efforts. The opportunity comes from the expertise and commitment of local agencies and organizations involved in homeland security. The challenge is to develop interconnected and complementary systems that are reinforcing rather than duplicative and that ensure essential requirements are met.⁴⁹

By publishing this in this document, did the President and his advisors unintentionally create a seam between the several layers of government, resulting in what I will portray later as a need for the introduction of military forces to handle different situations? I agree with the President when he states that, "All disasters are ultimately local events."⁵⁰ This places the immediate response on local and state-level leaders and resources, which I contend it should be. Additionally, the President seeks to "Review authority for military assistance in domestic security."⁵¹ This review would have immediate impact on the Posse Comitatus Act and would inevitably increase utilization of military forces in domestic or public security.

The National Response Plan, December 2004, is the Department of Homeland Security's effort to "align Federal coordination structures, capabilities, and resources into a unified, all-discipline, and all-hazards approach to domestic incident management."⁵² The Plan addresses the well-known fact that Governors can request Federal assistance under a Presidential emergency or disaster declaration when State-level resources are anticipated to become or are overwhelmed.⁵³ This has become the start point for what I perceive is an abuse of the armed forces regarding providing military assistance to civil authorities. Hurricane Katrina was the most recent and most evident lack of leadership, lack of knowledge, and abuse of this authority. The NRP also addresses appointing a Defense Coordinating Officer (DCO) and an accompanying Defense Coordinating Element (DCE) that would be resident in the Joint Field Office (JFO).⁵⁴ As I elaborated on earlier, the U.S. Army has already taken steps to not simply appoint these officers but assign them to respective states in an effort to make them permanent and ensure continuity.

Up to this point, I have analyzed the Constitutional and statutory requirements and limitations placed on civilian leaders and the military. What follows is an analysis of the domestic terror incident perpetrated by Timothy McVeigh on the Alfred P. Murrah Federal Building in downtown Oklahoma City, Oklahoma on April 19, 1995. This brief analysis of the roles and missions of the armed forces in the aftermath of the Oklahoma City bombing serves to shed light on the decisions made by civilian leaders and how the armed forces were utilized.

Case Study: The Oklahoma City Bombing

The Oklahoma City bombing occurred on April 19, 1995 and was the largest act of domestic violence in our nation's history prior to 9/11. The calm of that spring morning was shattered at 9:02 a.m. when a truck filled with a 4,800 pound ammonium nitrate fuel bomb exploded near the north entrance to the Alfred P. Murrah Federal Building in downtown Oklahoma City, Oklahoma.⁵⁵ The Final Report is a detailed account of the heroism and

professionalism exhibited by all of the first responders, urban search and rescue teams, military units, volunteers, and local, state, and federal government officials and employees. Overall, the military's role in responding to this emergency was relatively minimal, with a total of 731 Oklahoma National Guard Soldiers and 591 personnel from Tinker Air Force Base (AFB) participating in the operation.⁵⁶ Tinker AFB made every resource available to the operation and National Guard units assisted logistically by also providing boots, uniforms, entrenching tools, and other equipment.⁵⁷ Other National Guard Soldiers assisted members of the Federal Bureau of Investigation (FBI) and the Alcohol, Tobacco, and Firearms (ATF) at a local weapon firing range with sifting through debris. National Guard Chaplains provided counseling support to law enforcement officials.⁵⁸ Emergency medical service ambulances from nearby Tinker AFB, under a mutual aid agreement with the city, arrived soon after the blast and provided "load and go" services to evacuate the wounded to nearby hospitals.⁵⁹ United States Army Corps of Engineers personnel provided civil engineering expertise at the scene of the blast, continuously monitoring the columns and beams of the Murrah Building.⁶⁰ The first National Guard Soldiers arrived at 6:00 p.m. on April 19 and established perimeter security around the nine-square-block incident area. The next day on April 20, the National Guard and Tinker Air Force Base units were tasked to establish a tight security cordon around the Family Assistance Center in order to protect the privacy of the families.⁶¹ Perimeter security requirements changed slightly and were slowly phased out over the twenty days the National Guard was in place, with the last National Guard and Tinker AFB units being released May 8, 1995.⁶²

As one could possibly deduce from the succinct nature of this paragraph, this domestic terrorist incident was handled decisively and professionally. Although smaller in scale than the catastrophes of Hurricane Andrew and Hurricane Katrina, the response was effective and efficient. Leaders at the local, state, and federal levels had developed plans and continuously updated the conduct of the rescue and recovery operations as required based on requirements and assets available. The leadership at Tinker AFB had established in advance a mutual aid agreement with the city in the event of a mass casualty requirement. Governor Frank Keating activated the National Guard incrementally as requirements arose, and the Guard provided a good mix of functional expertise, services, and equipment in response to the crisis. More importantly, civilian and military leaders both realized and observed the limitations of the Posse Comitatus Act, tasking responding military units with disaster site perimeter defense or other non-law enforcement duties. This allowed the local and state authorities to conduct all direct law enforcement missions. Additionally, leaders at the incident command post re-tasked the military units as the situation changed and slowly phased out these same units over the twenty

days on site. Needless to say, state executive leaders in the Gulf Coast Region failed to “go to school” on the lessons learned from the Oklahoma City bombing incident. Had they done so, perhaps the outcome might have been different in cost to individual lives and property.

Today's Environment

All things considered, military units responded ably and humanely in the aftermath of the terrorist incident known as the Oklahoma City bombing, and civilian and military leaders utilized the units' functional expertise in a decisive, effective, and efficient manner. The same cannot be said for all situations, however. A plausible explanation for this is the fact that the Department of Defense was not the lead federal agency in domestic disaster relief in the superseded Federal Response Plan and the Department of Defense is not in the recently released National Response Plan (aside from Immediate Response Authority for “imminently serious conditions.”)⁶³ The most recent spate of hurricanes that impacted the Gulf Coast Region—Katrina, Rita, and Wilma—are the best examples for the purposes of this discussion. Most specifically, the mayor of New Orleans, Mayor Ray Nagin, failed to heed repeated warnings to order an evacuation of the city, and Louisiana Governor Kathleen Babineaux Blanco failed to heed the warnings from the President to encourage Mayor Nagin to issue an evacuation order as well as failing to request the President issue a federal disaster declaration two days in advance of the Hurricane Katrina making landfall vicinity of New Orleans. Failure to act and ignorance of their respective responsibilities as set forth in the National Response Plan cost some people their lives and others their property and livelihood. This leadership failure had a carry-over effect with the mismanagement of National Guard Soldiers and active component personnel, underutilizing critical assets such as hospital ships and tasking units with distributing food, ice, and water and debris clearing operations—clearly not making maximum use of the armed forces' functional area expertise.

Prior to these recent events, the National Academy of Public Administration (NAPA), an independent, nonpartisan, nonprofit organization, was asked to provide recommendations on how to effectively and efficiently manage the emergency management system through the three levels of government and the private sector regarding “. . . the relationship between preparedness for national security emergencies and domestic civil emergency preparedness and response.”⁶⁴ The panel provided the following summary in its 1993 report, *Coping with Catastrophe*:

[The Department of Defense (DoD)], the state guard units, and the governors must devote more attention to the need for a more extensive role for state guards in emergency management, particularly disaster response. Until some new

balance is struck between missions and capabilities keyed to DoD's Total Force Structure and the emergency management needs of the states, the emergency management capabilities of the states will be deficient. The pressure to call for federal troops in the event of disasters or civil disorder will continue, or even grow.⁶⁵

The National Academy for Public Administration was asked again in 1997 to provide an independent assessment of the National Guard's role in emergency management. Due to the complex nature of the National Guard's roles, missions, and resourcing, that panel did not provide recommendations for changes in laws or funding. Instead, the panel made seven recommendations,⁶⁶ many of which were later incorporated into the National Response Plan.

Later, in 2001 following 9/11, the Center for Defense Information generated the *Terrorism Project*, an in-depth analysis of the terrorist acts perpetrated on American soil prior to and including those on September 11, 2001 as well as the nation's federal response. Marcus Corbin and other analysts from the center proposed a restructuring of several government and military agencies, providing advantages and disadvantages for each recommendation. Several of the Project's recommendations were incorporated into today's Department of Homeland Security.

Upon further analysis, one is able to see that the U.S. government has chosen to observe and incorporate minor fixes, or "band aids," but failed to acknowledge and incorporate several other recommendations—some made by the same panels and commissions—in order to properly defend the people of the United States against terrorist incidents and in response to domestic emergencies.

Recommendations

In keeping with the Constitution, U.S. armed forces have responded admirably and professionally throughout U.S. history to defend vital national interests at home and abroad, throughout the entire range of military operations. The U.S. armed forces have fought the nation's wars, performed peace enforcement and peacekeeping operations, conducted humanitarian relief missions, assisted in hurricane and tsunami relief operations, quelled disturbances, and participated in post-conflict reconstruction of nations rebuilding after armed conflict. And this is but a partial list. Why? Because, as quoted in a recent edition of the *Christian Science Monitor*, "It's [the U.S. military] seen as the government's only lean, mean, can-do machine."⁶⁷ In what could be seen as a sign of the times, the author Stephen M. Duncan, in the book, *A War of a Different Kind*, cites an alarming increase over the past several decades of the government's use of the armed forces in operations other than war. Duncan's research reveals that U.S. armed forces were tasked to perform twenty missions overseas in

the fifteen years between the end of the Vietnam conflict and the end of the Cold War, whereas during the last decade the armed forces performed forty-eight missions overseas—with decreased end strength.⁶⁸ Participating in these smaller scale contingencies have increased personnel tempo (PERSTMPO) among the armed forces, not to mention responding to “other missions as assigned” domestically.

As seen in the above recommendations provided by different panels and commissions over the past decade, the U.S. government has taken heed of many of the recommendations, i.e., establishing the Department of Homeland Security, establishing Northern Command, redesignating military areas of responsibility to mirror FEMA regional response areas of operations, etc. However, as the provided highlights in these recent domestic disasters show, much work still needs to be done in order to best protect the public prior to a catastrophic terrorist or natural disaster event. So, articulated at the beginning of this article and following the constitutional requirements and statutory limitations as discussed earlier: How will the United States government change the military’s role at the federal, state, and local level as a part of homeland security? I will approach this question in reverse order: local, state, and then federal level.

The U.S. government does not need to change the military at the *local level* regarding homeland security. Local executive officials will continue to be responsible for leading immediate efforts and managing first responders, in conjunction with states and federal law enforcement officials, in terrorist and natural disaster incident response, primarily due to the fact that both directly impact the populace and infrastructure of a given locale. This logic is expressed in the National Response Plan and is echoed by Florida Governor, Jeb Bush:

I can say with certainty that federalizing emergency response to catastrophic events would be a disaster as bad as Hurricane Katrina. Just as all politics are local, so are all disasters. The most effective response is one that starts at the local level and grows with the support of surrounding communities, the state and then the federal government. The bottom-up approach yields the best and quickest results—saving lives, protecting property and getting life back to normal as soon as possible.⁶⁹

Local post commanders would continue to use their discretion when faced with imminent threats. National Guard units being utilized at the local level would be deployed under Title 32 to provide assistance to a city or municipality. Although now being questioned by several elected leaders, the Posse Comitatus Act should not be changed either because it not only protects citizen’s rights, it can be seen as protecting the rights of military personnel, keeping them from participating in potentially conflicting situations. Thus, there is no need for the military to change its role at the local level.

Conversely, the U.S. government should change the military at the *state level* in order to provide governors with a better mix of forces which are more responsive and possess the resources required to respond to potential terrorists and domestic emergencies. For example, governors of the National Governors' Association, in a prepared statement, eschewed federalizing emergencies as not the answer to the problem: "Governors are responsible for the safety and welfare of their citizens and are in the best position to coordinate all resources to prepare for, respond to and recover from disasters."⁷⁰ The 1997 National Academy of Public Administration panel cited repeatedly throughout its study the dysfunctional hierarchical government system that was in place to respond to domestic emergencies, detailing the serious ambiguity that exists between the state and federal levels of government which left state-level officials in a quandary over whether or not the state could rely on the federal level for assistance, let alone receive it.⁷¹ In an effort to resolve the ambiguity, states entered into memorandums of agreement to provide forces and equipment to neighboring states in the time of need—something the federal level of government should have resolved as the states' higher headquarters.⁷²

State governors control their respective state militias, providing each state with a ready resource that is immediately available to respond to any emergency. Redesignation of units at the state level—a common occurrence—would provide state governors with "element[s] . . . of the big five, plus one . . . [:] transportation, medical, engineering, aviation, . . . maintenance, . . . [and] military police."⁷³ These elements would provide high-demand assets such as five-ton trucks, medical assets, helicopters, etc., as well as the personnel with these military occupational specialties, to fight terrorists and to respond to domestic emergencies. Full-time National Guard personnel could also be used to augment the existing Federal Air Marshal plan to provide the Federal Aviation Agency and federal law enforcement with much-needed support as an integral part of homeland security at the state level. These state-level forces would be allocated in the Joint Strategic Capabilities Plan (JSCP) and would be resourced accordingly. What remains is the need for a fundamental shift in logic: Allowing National Guard units and their members to be placed in a non-deployable status in order to remain at the ready as state militias given the current Global War on Terrorism and homeland security.

The U.S. government needs to adopt and incorporate this fundamental shift in armed forces structure and missions at the *federal level* in response to the increasing demands of homeland security given the current paradigm. The thought of conducting such a radical reengineering of the armed forces is not new. The 1997 NAPA panel cited earlier in this piece came to the same conclusion: "The National Guard has arrived at a critical juncture. It has a

chance to redefine its relationships with other components and reaffirm or redefine its state and national defense missions and roles.”⁷⁴ A liberal think-tank agreed in 2002: “The Guard’s deep knowledge of emergency response systems, crisis management needs and law enforcement concerns makes it ideally suited to take the lead on homeland security.”⁷⁵ The recent catastrophic events in the Gulf Coast Region prompted the Christian Science Monitor to advocate the need for the National Guard to focus solely on homeland security in a non-deployable status.⁷⁶ This can be accomplished but would require an increase in the active duty armed forces end strength in order for the military to meet the Chairman of the Joint Chiefs of Staff’s intent as outlined in the national military strategy.⁷⁷ Currently, emergency management, disaster response, and serious civil disorder are being treated as an afterthought, and the Directorate of Military Support (DOMS) “. . . is there to locate and dispatch the needed equipment or personnel.”⁷⁸ This reengineering concept of the National Guard would resolve the aforementioned governmental ambiguity or seam in emergency preparedness and response.

The advantages of restructuring the military would (1) provide state-level resources—the militia—to a state’s governor and Adjutant General under the provisions of Title 32 and (2) allow National Guard personnel to enlist knowing they would not deploy. There would be no need for Title 10 authority to federalize the National Guard. First, restructuring would provide governors and state Adjutant Generals with a trained, focused, equipped, and resourced force with the right mix of specialties and equipment to respond to both terrorism and natural disasters. No longer would the state’s executive leaders be made to rely on federal assistance; the states could expand on a FEMA initiative, Performance Partnership Agreements (PPAs), which are interstate compacts designed to have one state assist another in need following a disaster.⁷⁹ These agreements would provide the necessary resources between states and throughout a given region as originally designed. Second, National Guard personnel could enlist and stay in a state and serve for twenty-plus years if desired. This would be a potential boon to the local economy, and families would be more receptive to their sons and daughters joining in this capacity knowing they would not be deployed, thus having a positive impact on the military’s all-volunteer force. Experience and continuity would be increased ten-fold.

Conceivable disadvantages of restructuring the military would (1) require an increase to armed forces’ end strength and a potential requirement to increase the military budget and (2) possibly worsen the existing schism between the active and reserve components. First, there are currently 150,000 Reserve Component Soldiers deployed on active duty fighting the Global War on Terrorism.⁸⁰ Restructuring the military to provide state governors with available assets and resources would be the necessary starting point, followed by identifying and moving the

residual units (including existing Enhanced Separate Brigades (eSBs)), personnel, and equipment to the active force and Reserves. Defining the active component and the Reserve roles and mission to meet the national defense strategy in the current geostrategic context would require a detailed study; however, panels and commissions from the past two decades have generated and published findings and recommendations, such as the 1997 NAPA study and several General Accounting Office (GAO) reports, which would prove invaluable to this process. The United States currently spends in excess of \$100 billion annually on homeland security.⁸¹ There would be a resultant shift from presidential declarations to state operations and maintenance (O & M) funding; however, this is an issue to be resolved by decision-makers promulgating the budget. Second, although the Army, for example, has worked diligently to sell the notion of "One Army," there still exists a notion of a factional rivalry between the military's three components. The "we versus they" contention has existed for decades;⁸² restructuring the military to make the National Guard non-deployable might exacerbate the problem, and then again, it might not given the change in mission to fit the existing paradigm. Both would be immediate but would have a short-term effect. There is always a concomitant, up-front cost when incorporating change, and this instance would be no different.

Granted, the Department of Defense has already taken several prudent steps to utilize more efficiently the standing armed forces, e.g., assigning Defense Coordinating Officers (DCOs) to states; conducting preliminary restructuring of the U.S. Army to move combat support and combat service support units to the National Guard; establishing Weapons of Mass Destruction Civil Support Teams (WMD CSTs); assigning senior officers and noncommissioned officers as advisors to the Chairman of the Joint Chiefs of Staff's office, etc. In my opinion I believe these "fixes" amount to the "band-aids" I noted earlier. I am uncertain as to why the federal government has not taken the necessary steps to resource the homeland security mission. Perhaps the reason lies in decision-maker reticence to making what could be perceived as wholesale changes with potentially far-reaching and lasting impacts on the government and society; however, restructuring at the state and federal level must be done in order to meet the needs of the people of this nation in the new millennium.

Conclusion

My intent for formalizing my research on this issue was to add to the debate regarding the need to restructure the military at the federal, state, and local levels. My experience in two active component/reserve component assignments, with accompanying experience in military support to civil authorities, fueled my desire to answer the question: How will the United States

government change the military's role at the federal, state, and local level as a part of homeland security? I believe the U.S. government and the Department of Defense need to conduct yet another mission analysis concerning homeland security and homeland defense and then make some thoughtful but major decisions in reengineering the military. A recent GAO report made the following observation: "Despite the Guard's response to homeland needs, officials in all of the states we visited expressed concerns about their Guard's preparedness for homeland security missions, especially given the high level of National Guard deployments to operations outside the United States."⁸³ I have named but a few of the detailed reports already in print on this subject; the U.S. government needs to stop giving short shrift to the recommendations from these esteemed panels and commissions and should seek to better align resources with priorities. Constitutionally and statutorily, restructuring the military as proposed can be done, and existing agencies such as FEMA and laws such as the Stafford Act simply need to be changed and amended, respectively, to reflect the needs of the nation. As for the Posse Comitatus Act, Thomas R. Lujan cited legal lessons learned from selected domestic employments in the 1990s to advance his theory that "Civilian and military leaders need to expect an increase in domestic deployments of US military forces. . . . Public confidence in the military can best be maintained by strict adherence to the legal underpinnings governing domestic operations of the armed forces."⁸⁴

The Department of Homeland Security published the *National Strategy for Homeland Security*, citing the importance of state and local leaders, private companies and organizations, and individual Americans to work together to improve homeland security.⁸⁵ In consonance with this decentralized focus, President Bush has instituted the President's Citizen Corps and FEMA's Community Emergency Response Team program. Both programs are admirable; however, the U.S. government must resolve the ambiguity that exists between the federal and state levels of government in order to meet the needs of the people of this nation.

In order to properly utilize the military instrument of national power, the United States government must grapple with the grammar and logic of the same and establish feasible, acceptable, and suitable missions for the military at the federal, state, and local levels of government regarding homeland security operations.

Endnotes

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² Tom Shoop, "Bush Calls for Greater Federal, Military Role in Emergency Response," 15 September 2005; available from http://www.govexec.com/story_page.cfm?articleid=32250; accessed 29 October 2005.

³ Eugene Smith, e-mail message to author, 22 September 2005.

⁴ Megan Scully, "Senator Asks Pentagon to revisit Ban on Military's Domestic Police Powers," 15 September 2005; available from <http://www.govexec.com/dailyfed/0905/091505cdam1.htm>; Internet; accessed 29 October 2005.

⁵ In my pursuit of articles and other media on this subject, I attempted to confine my review of available literature to the United States Constitution, United States Code, organization mission statements, panel and commission reports, and recent, prominent historical accounts as well as current articles. Much of the literature I accessed and used was open source government and intelligence articles, strategy publications, political journals, and Internet web sites. In that I am not testing a hypothesis, I will not utilize a traditional causal diagram and establish dependent and independent variables, nor will I include a comparative study.

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⁷ Jon Roland, "Principles of Constitutional Interpretation," 12 December 2002; available from http://www.constitution.org/cons/prin_cons.htm; Internet; accessed 29 October 2005.

⁸ U.S. Constitution, Preamble.

⁹ *Ibid.*, art. 1, sec. 8.

¹⁰ *Ibid.*, art. 2, sec. 2. The lone reference to the military in the Judicial portion, Article III, of the Constitution concerns extension of judicial power in cases of admiralty and maritime jurisdiction.

¹¹ *Ibid.*, 2d Amendment.

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¹⁷ *U.S. Code*, Title 14, part I, chapter 1, sec. I, 7 January 2003; available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+14USC1; Internet; accessed 30 October 2005.

¹⁸ U.S. Department of Homeland Security, "Travel and Transportation," available from http://www.dhs.gov/dhspublic/theme_home3.jsp; Internet; accessed 12 November 2005.

¹⁹ *U.S. Code*, Title 14, part I, chapter 1, sec. 2, 7 January 2003; available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+14USC2; Internet; accessed 30 October 2005.

²⁰ *U.S. Code*, Title 32, Chapter 1, sec. 102, 7 January 2003; available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+32USC102; Internet; accessed 30 October 2005.

²¹ *U.S. Code*, Title 32, Chapter 1, sec. 112, 7 January 2003; available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+32USC112; Internet; accessed 30 October 2005.

²² *U.S. Code*, Title 10, subtitle B, part I, chapter 303, sec. 3013, 7 January 2003; available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+10USC3013; Internet; accessed 30 October 2005.

²³ Cornell University Law School Legal Information Institute, "U.S. Code Collection," available from http://www.law.cornell.edu/uscode/html/uscode50/usc_sec_50_00000401----000-.html; Internet; accessed 19 November 2005.

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⁴³ Bush, *The National Security Strategy of the United States of America*, 25.

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- ⁴⁷ Richard B. Myers, *National Military Strategy of the United States of America* (Washington, D.C.: The Pentagon, 2004), 9.
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- ⁴⁹ Bush, *The National Strategy for Homeland Security*, vii.
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- ⁵⁴ *Ibid.*, 37.
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